P 7

1941

Department of Revenue Dept

OFFICE of the Board of Rev

STATION Madras

Its No. 3220	
Dated 29.11.41	

T 5319/41

29 NOV 19[illegible]

Today
29/11/41
5 PM

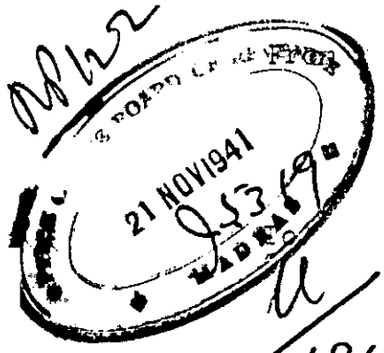
ages in the file 4+2

(SUBJECT.)

Suits - Lands acquisition) - South Kanara - Mangalore Tk & Tow
The Kuttiga Hithlu Town Planning Scheme - Nos. 14 to 17 of
Sub-Court South Kanara - Appeal to High Court by the parti
filing of Cross-objections - sanctioned

Urgent.
R.O.C.B3-8111-41.

South Kanara Collector's Office,
Mangalore, 18th November 1941.



W. V. Subrahmanyan, Esq., I.C.S.,
Collector of South Kanara.

The Secretary to the Board,
Land Revenue and Irrigation,
Madras.

Sir,

Suits - Land Acquisition - (South Kanara) - Mangalore --- Taluk and Town - The Guliga Hithlu Town Planning Scheme - L.A.C. No. 17 of 1937 - Subordinate Judge of South Kanara - Appeal ---- before the High Court of Judicature at Madras - A.S.No. 289/1941

****

I invite your attention to this office report R.O.C.B3-7003-39, dated 3-4-1941 and the Board's orders issued in R.P.Mis. No. 1039, dated 17-4-1941. I enclose a copy of the notice and a memorandum of Regular Appeal A.S.No. 289 of 1941 on the file of the High Court of Judicature at Madras received from the -- Revenue Divisional Officer, Mangalore. The Revenue Divisional Officer, Mangalore, reports that the receipt of the notice was -- acknowledged by him on 6-11-1941. The Government Pleader, Mangalore says that the time for cross objections would expire on -- 6-12-1941. I enclose the copy of the grounds of cross -------- objections furnished by the Government Pleader, Mangalore. I am of opinion that the grounds are in order. I request that the -- Board of Revenue may be pleased to request the Government Pleader Madras to oppose the appeal and prefer cross-objections. The -- Government Pleader, Madras may also be requested to get the ----- memo. of cross objections redrafted in the form he thinks best.

2. I enclose a certified copy of the decree in L.A.C.17/37, a printed copy of the judgment in L.A.C.Nos. 14, 15, 16 and 17 of-- 1937; records of R.Dis. 7003-39 and R.Dis.2802-36 of the ----- Collector's Office and R.Dis. 6456-40 and R.Dis.5214-35 of the Revenue Divisional Office, Mangalore.

For Collector.

3 [G.W.P]

DRAFT FOR APPROVAL.

	Date.	Initials.
When received for fair copying ..	29/11	Mo. SP.11
When copied ..	29/11/61	
When examined..		
When signed ..		
When despatched.		

SUBJECT :— Suits (Land Acquisition) - South Kanara - Mangalore IK Town - The Guliga Hithlu Town Planning scheme - L.A.C Nos. 14 to 17 of 1937 - Subcourt, South Kanara - Appeal to High Court by the parties - Filing of Cross-objections - Sanctioned

READ AGAIN _____, dated _____ 19____

" " _____ " _____ 19____

READ *ALSO* :—

No. _____ From the Colr of South Kanara, No. Re B3-8111/61 dated 18-11-1961 A

" _____ " _____ " _____ " _____ 19____

" _____ " _____ " _____ " _____ 19____

~~Order~~ / Resolution ~~Rout.~~ No. 3229 dated 29-11-1961

Forwarded to the Govt Pleader, Madras.

2/ He is requested to oppose the appeal & prefer cross-objections, amending suitably the draft grounds, if necessary. He is also requested to press the Govt's claim for costs not allowed in the lower Court and also for the reduction of the compensation amount.

3/ He is requested to obtain the necessary records & other particulars connected with the case from the Colr of South Kanara direct

Dept 29/11/61

To the G.P. Madras with Encls as per list-

Copy to the Colr of South Kanara

P.T.O

29/11 GP 29/11/61

List of Encls

Mr 3-10 CF in original

Judgment-copy (B)

Decree copy (C)

~~Collr's R.D. file 2882/36 dt 3.5.37~~

—do— 7003/39 dt 3.5.41

R.D.O's Rs's file 6456/40 dt 23.7.41

—do— 5214/35 dt 29.4.37

C.F. 32 (a).

X 5

Judicial Department

From (Name) Sri K. Kuttikrishna Menon,

Designation Government Pleader,

Station Madras.

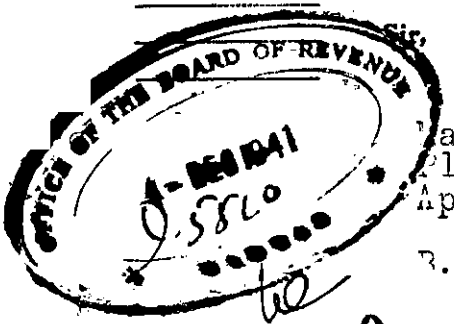
Received Registered

To

The Secretary to the Board of Revenue,

Land Revenue Irrigation

Enclosures: No. 1300 dated 3rd Dec. 1941.



Sir,

Suits - Land Acquisition - South Kanara - Mangalore Taluk and town - The Suliya Pithlu Town Planning scheme - L...O.17/37, Sub Court, S.Kanara - Appeal to High Court - Memo of objections - filed.

R.I.Mis.No. 3220, dated 29--11--1941. / P3CF 1 (R)

I have to-day filed Memorandum of Cross- objections in the High Court in A.S.No. 289 of 1941.

I have the honour to be,

Sir,

Your most obedient servant,

K. Kuttikrishna Menon 3-12-41

Government Pleader.

Subs: Same as overleaf

From the G. P. Madras No 1300 d/ 3.12.41 A

DESPATCHED
10 DEC 1941

Lois D 5510/41 d/ 9.12.41

Communicated to the Comr of South Kanara

GROUNDS OF CROSS OBJECTIONS.

1. The lower court erred in enhancing the valuation awarded by the Revenue Divisional Officer.

2. The burden was on the claimants to show that the Revenue Divisional Officer's valuation was wrong; and this has not bee discharged.

3. Admittedly the property was in a slum area; its potentialities in a scheme of town planning could not be taken into consideration; the lower court should have found that the valuation of these properties fixed by the Revenue Divisional Officer was fair and correct.

4. The Lower court should have held that the purposes for which the property was acquired were only for those laid in the Town Planning Scheme, and such purposes it could be put to only in pursuance of statutory powers and such potentialities should therefore not have influenced the value at all.

5. The lower court having found that the rental basis was wrong should have accepted the Revenue Divisional Officer's valuation as correct.

6. The lower court has not given any adequate reasons for incireasing the land value of those items from Rs.10000/- to Rs.12500 an acre in the fourth group and from Rs.6000/- to 7000/-in the fifth group.

7. The lower court was not justified in directing each party to bear its costs when the claim had been disallowed to a large extent, and the enhanced valuation in respect of buildings, trees and other property had been given up at the hearing.

8. The lower court should in any event have directed the Appellant to pay the Revenue Divisional Officer's costs in the lower court at least to the extent of the claim disallowed.

MEMORANDUM OF REGULAR APPEAL.

In the Court of the Subordinate Judge of South Kanara.

L.A.C. No. 17 of 1937.

In the High Court of Judicature at Madras.

A.S. No. 289 of 1941.

	In the Sub-Court.	In the High Court.
Between		
1. Bibi Rukia. 2. Sayed Ali Saheb. 3. Sayed Muhammad Jafar Shah. 4. Sayed Hasan Valap (now major).	*Respts.* 2 *to* 5. (*Clamts.* 2 *to* 5.)	*Applts.*
and		
1. The Revenue Divisional Officer, Mangalore. 2. Herbert Brito for Maurice Brito. 3. Jeppu Madhava Naik.	*Petr.* (*L.A. Officer.*) *and respts.* 1 *and* 6.	*Respts.*

The address of the appellants for service of all notices and processes is that of their Counsel, Messrs. John and Row and Mr. K. Krishnaswami Ayyangar, at "Andhra Insurance Buildings," Thambu Chetti street, Georgetown, Madras.

The appellants above named beg to prefer this Memorandum of Regular Appeal to this Honourable Court against the award of the Subordinate Judge of South Kanara, dated the 25th day of November 1940, in L.A.C. No. 17 of 1937, on the file of his Court for the following among other grounds:—

1. The order passed by the lower Court is against law, evidence, both documentary and oral, and the circumstances of the case.

2. The lower Court failed to appreciate the evidence, both oral and documentary, and in failing to appreciate this evidence arrived at a wrong figure as to the value of the land. The figure arrived at by the lower Court is arbitrary and is not based on any evidence or principle.

3. The lower Court has not paid due attention and consideration to the various documents filed on behalf of the claimants in this case.

4. The lower Court has proceeded on an entirely wrong basis and approached the case of the claimants on a wrong perspective.

5. The lower Court failed to consider all the relevant and material evidence in this case.

6. The lower Court failed to note that the land acquired, about half an acre in area, is a compact plot and ought not to have been divided into groups for purposes of valuation. The division into groups is illegal and arbitrary.

7. The lower Court failed to note that the length of the plot acquired is 227 feet and the breadth ranges from only 67 feet to 127 feet.

8. The lower Court was wrong in cutting the plot into portions lengthwise. If there was any need to cut this small plot for building purposes, it ought to have been divided across the length, which division would not have affected the value of any portion of the plot.

9. The lower Court ought to have valued the land at Rs. 30,000 an acre. The lower Court failed to note that the land was purchased by the present owner in 1920 at over Rs. 17,000 an acre. The lower Court failed to note that R.W. 2, the Subdivisional Officer, who inspected the property in the first instance, and valued the property fixed the price at Rs. 30,000 an acre for the whole plot. The lower Court failed to note that neighbouring plots which were not more valuable were ordered to be acquired by Mr. Rutherford, Special Land Officer at Rs. 30,000 an acre. The lower Court failed to note that even on the basis of capitaling the net rental, the valuation is abou Rs. 30,000.

10. Whatever be the basis of calculation the lower Court ought to have fixed the value at Rs. 30,000 per acre.

11. The lower Court ought to have fixed one value for the entire plot and that value ought to have been fixed at not less than Rs. 30,000 per acre, exclusive of the superstructures.

12. The lower Court misconstrued Section 35 (3) (e) of the Town-Planning Act.

13. The lower Court ought to have held that the provisions of the Land Acquisition Act alone apply and not the provisions of the Town-Planning Act. In any event the principles of the Land Acquisition Act ought to have been made applicable to such portions of the property which do not come within the express purview and operation of the Madras Town-Planning Act.

14. The lower Court ought to have awarded solatium.

15. The lower Court erred in holding that the date of the notification under Section 10 of the Town-Planning Act is the crucial date for valuation in this case, as the actual acquisition was made about six years after this date, and the learned Judge ought to have held that the law does not contemplate this inordinate delay in acquisition.

16. The remarks of the lower Court that there were no drainage facilities for the locality and that water stagnated there are unsupported by evidence and are irrelevant.

17. The lower Court was wrong in not considering the fact that without material improvement or expenditure a portion of the same plot was sold in public auction at over Rs. 1,50,000 per acre, soon after the acquisition, thus indicating the potential value of the land.

18. The lower Court ought to have allowed the costs of the proceedings against the Government and ought to have awarded interest on the amount disallowed by the Land Acquisition Officer.

19. The lower Court was not justified in drawing an adverse inference from the non-production of accounts by the appellants.

20. The conclusion arrived at by the lower Court is not consistent with the reasons given in the order.

Memo. of valuation.

	Rs. A. P.	Rs. A. P.
Compensation awarded by the Sub Judge for the land	5,141 8 8	..
Amount claimed by the appellants ..	14,850 0 0	..
Difference ..		9,708 7 4
Interest at 6 per cent on Rs. 9 708-7-4 from 20—11—36 to 11—3—41 ..		2,509 10 4
Costs disallowed for appellants fee ..		367 10 6
Total		12,585 12 2

A

Court fee paid thereon Rs. 824-15-0.

Additional Court-fee to be paid, Rs 22-8-0.

(Signed) K KRISHNASAMY AYYANGAR

AND

Madras, (,,) JOHN AND ROW,

12—3—1941. *Counsel for Appellants.*

PRINTED AT THE GOVERNMENT PRESS, MADRAS.

H. Ct. 1-D. 2,000—10-34.

COPY.

ನಕಲು.

ಮದ್ರಾಸ್ ಹೈಕೋರ್ಟ್ ಒಫ್ ಜುಡಿಕೇಚರಿನಲ್ಲಿ.
ಸಂ॥ 1941 ನೇ ಇಸವಿಯ ಅಪ್ಪೀಲು ನಂಬರು. 289

ಪ್ಲೆಂಟಿ.

ರೆಸ್ಪಾಂಡೆಂಟು.

5960-41-10

ಸಂ॥ 194 ನೇ ಇಸವಿ ಕೋರ್ಟಿನವರು, 19

ಮಾಡಿದ ಯಮೇಲ ಅಪ್ಪೀಲು,

ರೆಸ್ಪಾಂಡೆಂಟು ರೀಗೆ

ಮೇಲೆ ಕೋರುವ ಡಿಕ್ರಿಯು (ಹುಕುಮಿನ) ಮೇಲೆ, ಮೇಲೆ ನಮೂದಿಸಿರುವ ಅಪ್ಪೆಲಾಂಟರಿಂದ ಒಂದು ಅಪ್ಪೀಲು ದಾಖಲ್‌ಮಾಡಲ್ಪಟ್ಟು ಈ ಕೋರ್ಟಿನಲ್ಲಿ ರಿಜಿಸ್ಟ್ರರ್ ಮಾಡೋಣಾಗಿಯದೆ ಎಂತಲೂ, ಅದರಲ್ಲಿ ನಿಮಗೆ ಪ್ರತಿವಾದಿಸ ಬೇಕೆಂಬ ಮನಸ್ಸಿದ್ದರೆ ನೀವು ಈ ಕೋರ್ಟಿಗೆ ಹಾಜರಾಗಿ ದಾಕಲಾಗಿ ನಿಮಗೆ ಈ ನೋಟಿಸು ಸಾದರಾದ 30 ದಿವಸಗಳೊಳಗೆ ಆ ಕುರಿತು ಅಪ್ಪೆಲಾಂಟರಿಗಾಗಲೀ - ಯಾ ಅವರ ವಕೀಲರಿಗಾಗಲೀ ನೋಟಿಸು ಕೊಡತಕ್ಕದ್ದು ಎಂತಲೂ ತಿಳಸೋಣಾಗುತ್ತದೆ.

ಈ ಅಪ್ಪೀಲಿನಲ್ಲಿ ನಿಮ್ಮ ಕಡಿಯಿಂದ ನೀವು ಕುದ್ದಾಗಿಯಾಗಲೀ, ನಿಮ್ಮ ವಕೀಲರಮುಕಾಂತವಾಗಲೀ - ಯಾ - ಕಾನೂನ ಪ್ರಕಾರ ನಿಮ್ಮಗೋಸ್ಕರ ಹಾಜರಾಗಲಿಕ್ಕೆ ಅಧಿಕಾರಪಟ್ಟವರಿಂದಾಗಲೀ ಹಾಜರಾಗಿ ದಾಖಲಾಗಿದ್ದರೆ, ನಿಮ್ಮ ಗೈರ ಹಾಜರಲ್ಲಿ ಅದನ್ನು ತನಿಕೆಯಿಂದ ಇತ್ಯರ್ಥಿಸೋಣಾಗುವದು.

ಅಪ್ಪೆಲಾಂಟನ ಮೇಲೆ ಜ್ಯಾರಿ ಆಗತಕ್ಕ ಬಗ್ಯೆ ವಿಳಾಸ್—

ಮದ್ರಾಸ್ •ಆತನ ವಕೀಲ್ ಮು-ರಾ-ರಾ-ಶ್ರಿ,

ಅಪ್ಪೆಲಾಂಟನು ಕುದ್ದಾಗಿ ಹಾಜರಾದರೆ ಜ್ಯಾರಿ ಬಗ್ಯೆ.

ಆತನಮೇಲಿನಾವನ್ನು ನಮೂದಿಸತಕ್ಕದ್ದು.

ಕೋರ್ಟಿನವರ ಅಪ್ಪಣೆ ಮೇರೆಗೆ.

MADRAS, 193

ಮದ್ರಾಸು, 193 ಸಂ॥ ಮೂಹೆ ತಾರೀಖು.

Sub-Assistant Registrar, ಸಬ್ ಅಸಿಸ್ಟ್ಯಾಂಟ್ ರಿಜಿಸ್ಟ್ರಾರ್,
Appellate Side, ಅಪ್ಪೆಲೇಟ್ ಸೈಡ್.

ಅಪ್ಪೆಲಾಂಟರಿಂದ ಐ. ಎ. ನಂಬ್ರ . ಒಫ್ 193 ನೇ ದಾಕಲ್ಮಾಡಲ್ಪಟ್ಟು ಸಂ॥ 193 ನೇ ಇಸವಿ ನೇ ತಾರೀಕಿನ ಹುಕುಂ ಪ್ರಕಾರ ಅಮಲ್ದಾರಿ ತಡೆಸಲ್ಪಟ್ಟಿದೆ (ಅಥವಾ ಬೇರೆ ಹುಕುಂ ಮಾಡೋಣಾಗಿಯದೆ).

ಹೈಕೋರ್ಟಿನಲ್ಲಿ ರಿಜಿಸ್ಟ್ರಾರ್ ಆಫೀಸು ಕೆಲಸ ನಡಿಸುವಬಗ್ಯೆ ಬೆಳಗ್ಯೆ 11 ಘಂಟೆ ಮೊದಲು ಸಾಯಂಕಾಲ 4 ಘಂಟೆ ವರೇಗು ತೆರೆದಿಡಲ್ಪಡುವದು.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.
MEMORANDUM OF APPEARANCE.

Appeal No. *of* 193

Appellant.

Respondent.

Take notice that the respondent intends to appear and defend the above appeal, and that his address for service of all notices and processes is (insert address).

The said respondent requires list of the papers which the appellant proposes to translate and print.

Dated the day of 193

Vakil for Respondent.

To

The Registrar, High Court of Judicature, Madras.

Land Acquisition - Proj (Urgent)

Ref 5940-41-B

forwarded to the Government Pleader, Mangalore. in the sub. court and intimate

Please ascertain, and report, the L.A.C. number and "C" register number of this office, to which L.A. 17/37 of the Sub-Court, Mangalore relates & the matter may please be treated as urgent & the reply sent by return of post.

Revenue Divl Office

6.11.41

Ref:- A-1135-41 dated 7.11.1941.

Returned to the Revenue Divisional Officer Kanigalong with necessary information.

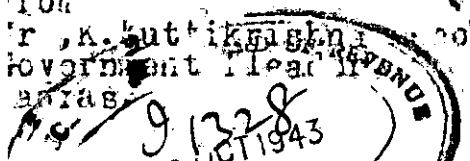
The Land Acquisition No. is ~~21/38-39~~ 28 of 1936 on the file of your Office. Your Office Ref No. is C No. 2203-39-M, dated 11.7.19

Government Pleader

7.11.41.

From

r ,K. Sutikuppi[illegible]on, The Secretary to Govt
Government Pleader, Revenue Dept.
anras. Fort St. George,
Madras.



Sir, No. 15-3 dated 21-10-43.

Subject: Mysore - Madras High Court -
A. No.219/41 - Land Acquisition - Town Planning scheme - result reporting.

The Land Acquisition Officer, Mangalore, acquired certain lands in Mangalore Town for the purposes of the Sulikatthlu Town Planning Scheme and awarded a compensation of Rs.1,979/- The claimants were dissatisfied with the said award and on their application the matter was referred to the Sub-court, South Kanara. The Subordinate Judge enhanced the compensation by Rs.1139/- Against the said decision claimants 2 to 5 filed an appeal

(A.[illegible] No.269/41) [illegible] High Court, claiming Rs.12,585/- as per instructions of the Board of Revenue in B.[illegible] No.3220, dated 29-11-41 filed a Memorandum of Cross-objections in the High Court for the reduction of the excess compensation and claiming the proportionate costs disallowed by the lower court.

The appeal and the Memorandum of Cross objections were heard by Krishnaswami Iyengar and Somayya JJ on 15-10-43 and 21-10-43 and judgment was delivered on 21-10-43 allowing the appeal to the extent of Rs.6880-10-11 with costs on the additional sum awarded and dismissing the Memorandum of Cross-objections with costs.

21-10-43

Government Pleader.

Copy to the Secretary to the Board of Revenue with records.

Copy to the Collector of South Kanara.

173

List of enclosures.

—

Pages 3–10 C.F. in original.

Judgment copy

Decree copy

Collector's R.Disl file 2802/36 d/ 3-5-37.

,, 7003/39 dated 3-5-41.

R.D.Os. R.Dis. file 6456/40 d/ 23-8-41.

,, 5214/35 dated 29-4-37.

—

AS 289/41

AJ (1) 3.11. (Mn. E.C w) G. 1328/43

Sub: as at p. 1/c

Read: G. P's letter 1530 dated 21/10/43 - Q

L. dis G. 1328/43 3/11/43

Recorded

2. The records returned by the G.P are returned herewith.

3/11/43 3/11/43

O.N

After issue this will be stitched with APad (B)

4/11/43

To the calling S. Kanaranatnam with records as per list p 5 ct.

1) certified copy of decree in suit no. 8

2) Printed copy of judgment in 8

3) collis RDs. 7008-39

3.5.41.

4) 2802-36

3.5.37

5) Mangalme Rod RDs

5214-35

29.4.37

6) 6456-40

23.7

4/. amount

pl. mark

23 for record

3/x1

M-1 (if necessary)
Q.8
A.S.[illegible]

Last date for filing cross. object - 6 - 4

Note file

Put up

R.Dis No. 2802/36 & 3.5.37 (K)

B.P. Nis No. 1039 & 17.4.41 (H)

Judgment Copy (B)

Decree Copy (G)

Suits - (Land acquisition) - South Kanara - Mangalore taluk and town - The Ezhiga Hithlu Town Planning Scheme - L.A.C. Nos 14 to 17 of 193[illegible] Sub. Court, South Kanara - Appeal to High Court by the parties - Filing of cross-objections

From the Collector of S. Kanara

Rec'd B.3. 8111-41 dated 18.11.41

To A.S. (J)

Please see the notes at pp 1-3. N.F of B.P. Nis 1039 dated 17.4.41 and the order thereon.

2. The respondents Nos 2 to 5 in L.A.C. No. 17 of 1937 have appealed to the High Court for further enhanced compensation again the order of the Subordinate Judge, South Kanara. The amount so claimed is Rs 4,850-0-0 over that awarded by the Sub Judge i.e. Rs 5141-8-. As has been decided by the Board, the Govt have to oppose the appeal and file cross-objections since the parties have appealed.

3. The draft grounds of cross-objection submitted by the local G.P. seem sufficient. The question of costs, which has not been allowed by the lower Court for the Govt, has also been raised therein.

4. The G.P., Madras may be requested to oppose the appeal and prefer cross-objection amending suitably the grounds if necessary. He may also be requested to press the Govt claim for costs not allowed in the lower Court and also for the reduction of the Compensation amount. Pl. orders.

[illegible]
27/11/41
28 folios

mas
28/11/41

To A.S.

Draft submitted

[illegible]
29/11/41
29 folios

mas
29

ADT

B.P.No. Ms 3220
Dated 29.11.41

Single Member
Two Members
~~Full~~ Board.

I-A.	A.L.S. & L.R.	Assistant Secretary		J.S. Secy.	M 3	M 2	N 1
		L.R.	Irrigation. Sep. Rev.				
1.			✓	✓			
1. Open file seen by			✓				
2. Final draft seen by							
3. Now circulated to							
4. Initials.		W 3/12					

Passed for record.

Secretary

Joint Secretary.

~~A.S. (L.R.)~~
A.S. (Irrign.) mas 3/12/41
A.S. (Sep.Rev.)
A.S. & L.R.
I-A.

Note:- Entries not required to be scored out.